

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-556-C - ORDER NO. 92-196  
MARCH 13, 1992

IN RE: Application of BSN Telecom Company for        ) ORDER  
a Certificate of Public Convenience and        ) GRANTING  
Necessity to Operate as a Reseller of        ) CERTIFICATE  
Telecommunications Services.        )

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of BSN Telecom Company (BSN or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. BSN's Application was filed pursuant to S.C. Code Ann. §58-9-280 (1976) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed BSN to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of BSN's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. BSN complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone & Telegraph Company (Southern Bell) and the

South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on February 12, 1992, at 2:30 p.m. in the Commission's Hearing Room. The Honorable Henry G. Yonce, Vice-Chairman, presided. Randolph W. Hunter, Esquire, and Charles H. Helein, Esquire, represented BSN. Caroline N. Watson, Esquire, represented Southern Bell; Carl F. McIntosh, Esquire, represented the Consumer Advocate; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

After a full consideration of the applicable laws, the Application, and the evidence presented by each of the parties, the Commission makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. BSN is a privately-held corporation incorporated in the State of Colorado. BSN is a switchless reseller which provides interstate, interexchange long distance telephone service. It offers intrastate interexchange telecommunications services on a resold basis by obtaining volume discounted services from facility-based carriers. BSN seeks a Certificate of Public Convenience and Necessity to operate as a reseller of interexchange services on an interLATA basis within the State of South Carolina. Application.

2. BSN presented the testimony of Elene Hawkins, Vice-President of Operations for the Company. Ms. Hawkins testified that she had twenty years experience in management and

approximately ten years experience in the telecommunications industry. She testified that the owners and customer service department supervisor of BSN had backgrounds in the telecommunications industry.

3. Ms. Hawkins testified that BSN has a net worth of \$1,339,000. She explained that BSN has a \$500,000 irrevocable letter of credit with AT&T and other letters of credit through its own bank.

4. Ms. Hawkins testified that BSN's underlying carrier is AT&T and that the Company planned to resell AT&T's Software Defined Network (SDN) and Distributed Network Services (DNS). Ms. Hawkins explained BSN did not intend to carry intraLATA traffic. She testified BSN would provide access only through use of Feature Group D so that local exchange carriers would be able to default or block intraLATA traffic.

5. Ms. Hawkins testified that BSN does not intend to offer operator services or payphone services.

6. Ms. Hawkins testified that BSN is authorized to provide intrastate resale services in Montana, North Dakota, New Jersey, Texas, Wisconsin, Nebraska, Mississippi, North Carolina, Florida, South Dakota, Massachusetts, New York, Iowa, Illinois, Indiana, and Oregon.

7. Ms. Hawkins testified that BSN would provide South Carolina consumers with a competitive long distance price and with high quality, reliable long distance service. In addition, the Application indicates that BSN will provide South Carolina

telephone users with increased billing options and will provide an additional tax revenue source for the State of South Carolina.

8. Southern Bell offered the testimony of C.L. Addis, Staff Manager of Regulatory Matters. Mr. Addis testified that Southern Bell did not oppose the resale of SDN on an interLATA basis but that it was concerned about the completion of intraLATA calls over SDN.

9. At the conclusion of BSN's case and again after the presentation of all the evidence, Southern Bell moved for a directed verdict. Southern Bell argued that BSN's Application was deficient in that it failed to meet the notice and filing requirements of S.C. Code Ann. §58-9-350, -520, and -570 (1976, as amended).

#### CONCLUSIONS OF LAW

1. The Commission finds that BSN's Application fully complies with all relevant statutory provisions. Contrary to Southern Bell's argument, Section 58-9-520(Supp. 1991) only requires a telephone utility to provide the Commission with thirty days advance notice of its intention to file a new rate or tariff which will affect its general body of subscribers. Here, BSN seeks a certificate of public convenience and necessity under Section 58-9-280 to operate as a telephone utility in South Carolina. BSN is seeking initial authority to operate as a utility and approval of its initial rates and charges; it is not seeking authority to establish new rates for its customers. Accordingly, the Commission concludes that Section 58-9-250 is inapplicable and, consequently,

denies this portion of the motion for a direct verdict.

2. Likewise, the Commission concludes that Section 58-9-350 (1976) is inapplicable. Section 58-9-350 provides telephone utilities with the right to charge depreciation as an annual operating expense. Alternatively, the Commission may require a telephone utility to charge depreciation as an operating expense. This Commission has not required BSN to submit depreciation as an operating expense. Moreover, BSN has not elected to charge depreciation as an operating expense. BSN's Application has not violated Section 58-9-350 by the Company's decision not to submit depreciation as an expense or by the Commission not requiring the Company to submit depreciation as an expense.

3. The Commission concludes that Section 58-9-570 (1976) is inapplicable to BSN's Application for a Certificate of Public Convenience and Necessity and for the establishment of initial rates and charges. Section 58-9-570 appears under Article V, Chapter 9 of Title 58 of the South Carolina Code of Laws. Article V is entitled "Telephone Companies - Changes in Rates." Since BSN is seeking authority to operate as a telephone utility in South Carolina and authority to charge its initial rates, the Commission concludes Section 58-9-570 is inapplicable.

4. The Commission concludes that BSN has the experience, capability, and financial resources to provide the service described in its Application and by Ms. Hawkins' testimony.

5. The Commission concludes that South Carolina telephone users and the State itself will benefit by the services intended to

be provided by BSN. Accordingly, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to BSN to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility-based carriers approved by the Commission.

6. The Commission recognizes that BSN does not intend to resale telecommunications services for the purpose of making intrastate intraLATA calls. However, in order to prevent the unauthorized transmittal of intraLATA long distance traffic BSN shall be required to provide its customers with access by use of Feature Group D Switched Access. Should BSN complete any unauthorized intrastate intraLATA calls then the Company will be required to compensate the local exchange companies for the unauthorized calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

7. The Commission adopts a rate design for BSN for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts BSN proposed maximum rate tariffs.

8. BSN shall not adjust its rates below the approved maximum

level without notice to the Commission and to the public. BSN shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of BSN's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1991).

9. BSN shall file its tariff and an accompanying price list in a loose leaf binder to reflect the Commission's findings within thirty (30) days of the date of this Order. BSN shall delete provision 2.13 regarding advance payments and the portions of 3.4.1 and 3.5.1 which require a \$200.00 monthly bill.

10. BSN is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

11. With regard to BSN's resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

12. BSN shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If BSN changes underlying carriers, it shall notify the Commission in writing.

13. BSN shall file surveillance reports on a calendar or

fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director  
(SEAL)



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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR 12 MONTHS  
ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

\*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN  
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF  
CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR ENDING  
\_\_\_\_\_.

\*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION  
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE  
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL  
AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3  
ABOVE).